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COSTCO WHOLESALE CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHELSEA KHOO,

Plaintiff,

vs.

COSTCO WHOLESALE CORPORATION, ,
a business entity form unknown; and DOES 1
through 20, Inclusive,

Defendants.

Case No.

[San Mateo County Superior Court Case No.
21-CIV-01517]

**DEFENDANT COSTCO WHOLESALE
CORPORATION'S NOTICE OF
REMOVAL TO FEDERAL COURT
UNDER 28 U.S.C. § 1441(b) [DIVERSITY]**

Action Filed: March 22, 2021
Trial Date: N/A

TO THE HONORABLE JUDGES AND CLERK OF THE COURT:

PLEASE TAKE NOTICE that Defendant COSTCO WHOLESALE CORPORATION
hereby removes to this Court the state court action described below:

I. STATUS OF PLEADINGS AND DISCOVERY

On or about March 22, 2021, Plaintiff CHELSEA KHOO (hereinafter "Plaintiff") filed a
Complaint against COSTCO WHOLESALE CORPORATION (hereinafter "Costco") in the San
Mateo County Superior Court of California, entitled CHELSEA KHOO v. COSTCO
WHOLESALE CORPORATION and DOES 1-20, inclusive, Case No. 21-CIV-01517 (hereinafter
the "Complaint") (Request for Judicial Notice in Support of Costco's Notice of Removal ("RJN"),

75005.0071/16065187.1

**DEFENDANT COSTCO WHOLESALE CORPORATION'S NOTICE OF REMOVAL TO FEDERAL COURT
UNDER 28 U.S.C. § 1441(b) [DIVERSITY]**

1 Ex. A.) The Complaint alleges one cause of action for negligence - premises liability. (*Ibid.*)
 2 Costco was served with the Summons and a copy of the Complaint on or about January 25, 2022.
 3 (RJN, Ex. A.)

4 The Complaint alleges that on or about March 23, 2019, Plaintiff Chelsea Khoo sustained
 5 injuries arising out of a slip and fall accident at the Costco Wholesale Warehouse located at 1600
 6 El Camino Real, in South San Francisco, CA. (RJN, Ex. A.) Plaintiff seeks medical and
 7 incidental expenses, lost wages, lost earning capacity, and punitive damages.

8 Costco filed an Answer to Plaintiff's Complaint in San Mateo County Superior Court on
 9 January 24, 2022. (RJN, Ex. C.) In the Answer, Costco asserted a general denial, as well as
 10 various affirmative defenses. (*Ibid.*)

11 Upon information and belief, Costco is the only named defendant which has been served
 12 to-date in this matter. (Fales Dec. at ¶5.) Costco is not aware of plaintiff effectuating service on
 13 any other "Doe" defendants. (*Id.*) Since no other defendant has been named or served, no consent
 14 is required for removal. (*Destfino v. Reiswig*, 630 F.3d 952, 956 (9th Cir. 2011)).

15 Since this action was commenced in the San Mateo County Superior Court, removal to the
 16 Northern District of California is appropriate.

17 **II. STATEMENT OF JURISDICTION**

18 This civil action involves parties who are citizens of different states and the amount in
 19 controversy exceeds \$75,000. Accordingly, this Court has jurisdiction under 28 U.S.C. § 1332,
 20 and has the power to remove this matter to this Court pursuant to 28 U.S.C. § 1441(b).

21 **A. Complete Diversity of Citizenship**

22 In order to invoke federal diversity jurisdiction pursuant to 28 U.S.C. § 1332, complete
 23 diversity of citizenship must exist between the parties. (*Matao Yokeno v. Sawako Sekiguchi*, 754
 24 F.3d 649, 652 (9th Cir. 2014).) Here, Plaintiff and Costco are citizens of different states. Thus,
 25 diversity of citizenship exists between the parties.

26
 27
 28 For diversity purposes, a person is a "citizen" of the state in which he or she is domiciled.

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(*Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983).) A person’s domicile is the place he or she resides with the intention to remain or to which he or she intends to return. (*Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).) Where the complaint does not identify the plaintiff’s domicile, that fact must be set forth in defendant’s notice of removal. (*See Rolling Greens MHP, L.P. v. Comcast SCH Holdings, L.L.C.*, 374 F.3d 1020, 1021 (11th Cir. 2004).)

Here, Plaintiff is a resident of the state of California. Although Plaintiff does not allege her place of domicile in the Complaint, public records indicate that she was a resident of San Francisco County at the time of the accident and remains a resident at that location. (RJN Ex. F, Fales Dec. at ¶ 8.) Accordingly, Plaintiff is and was a citizen of the State of California.

In order to ascertain the citizenship of a corporation, courts look to the state of incorporation, and the state where the corporation has its principal place of business. (28 U.S.C. § 1332(c)(1).) Here, Costco is a corporation formed and incorporated under the laws of the State of Washington. (RJN, Ex. D.) Moreover, Costco is headquartered and maintains its principal place of business at 999 Lake Drive, Issaquah, Washington 98207. (RJN, Ex. E.) Accordingly, Costco was and is a citizen of the State of Washington. As such, diversity-of-citizenship exists between the parties.

B. No Resident Defendants

Pursuant to 28 U.S.C. § 1441(b)(2), when removing a case to federal court on the basis of diversity jurisdiction, none of the defendants may be “citizens of the State in which such action is brought.” In this case, Plaintiff resides in California. (RJN, Ex. F Fales Dec. at ¶ 8.) The only named and served defendant, Costco, is a citizen of the State of Washington. To Costco’s knowledge, Plaintiff has not effectuated service on any other “Doe” defendants. (RJN Ex. D, E; Fales Dec. at ¶ 6,7,9.) Thus, complete diversity exists because no defendant resides in the State of California.

1 **C. Amount in Controversy**

2 Pursuant to 28 U.S.C. § 1332(a), in order to invoke diversity jurisdiction, the amount in
3 controversy must exceed \$75,000, exclusive of interests and costs. When a plaintiff fails to
4 “specify a particular amount of damages” in the complaint, the removing party is required to
5 establish that it is “more likely than not” that the amount in controversy exceeds the statutory
6 amount. (*Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992); *McPhail v. Derre & Co.*, (10th
7 Cir. 2008) 529 F.3d 947, 954 (removing defendant must prove by a preponderance of the evidence
8 that the amount in controversy is satisfied).) In making that determination, courts consider
9 compensatory costs, including general and special damages, as well as attorney fees. (*Meisel v.*
10 *Allstate Indem. Co.*, 357 F.Supp.2d 1222, 1225 (E.D. Cal. 2005).) Courts also consider “other
11 papers” not filed with the court. (*Kuxhausen v. BMW Financial Services NA LLC*, 797 F.3d 1136,
12 1140 (9th Cir. 2013). The amount in controversy is merely an estimate of the total amount in
13 dispute; it is not a prospective assessment of the defendant’s liability. (*Lewis v. Verizon*
14 *Communications, Inc.*, 627 F.3d. 395, 400 (9th Cir. 2010).)

15 A Plaintiff’s concession that the amount in controversy exceeds \$75,000 is sufficient to
16 establish diversity jurisdiction upon this Court. (See *Singer v. State Farm Mut. Auto Ins. Co.*, 116
17 F.3d 373, 376 (“...where state law prohibited plaintiff from stating the amount in controversy in
18 the complaint, the district judge has discretion to accept the admission as establishing it.
19 Otherwise, we would be adopting the illogical position that a plaintiff can establish the amount in
20 controversy by an ad damnum, but not by a formal admission against the plaintiff’s interest in
21 choice of forum.”). Such a concession is tantamount to a plaintiff expressly alleging damages in
22 excess of the jurisdictional amount, which we accept as the amount in controversy if done in good
23 faith. (See *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551 (2014)).
24 Moreover, the Courts looks to “facts presented in the removal petition as well as any summary
25 judgment type evidence relevant to the amount in controversy at the time of removal.” *Matheson*
26 *v. Progressive Specialty Ins., Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003); *Johnson v. Am. Online,*
27 *Inc.*, 208 F.Supp.2d 1018 (N.D. Cal. 2003) (A Defendant may rely on discovery responses for
28 determining the amount in controversy.)

1 In the present case, Plaintiff did not state the exact amount of damages claimed in the
 2 Complaint; however, Plaintiff served Defendant with a Statement of Damages which provides that
 3 the damages claimed far exceed \$75,000. (RJN, Exhibit B; Fales Dec. ¶ 3.)

4 This Statement, while not a pleading, clearly constitute an “other paper” which may be
 5 considered for purposes of determining the amount in controversy here. (*Kuxhausen v. BMW*
 6 *Financial Services NA LLC*, 797 F.3d 1136, 1140 (9th Cir. 2013).) In light of these
 7 representations and the scope of injuries and types of damages alleged in the Complaint, it is clear
 8 that claims at issue will exceed the jurisdictional minimum of this Court.

9 **III. TIMELINESS OF REMOVAL**

10 Pursuant to 28 U.S.C. § 1446(b), if it is not clear by the initial pleading that the case is
 11 removable, “a notice of removal may be filed within thirty days after receipt by the defendant,
 12 through service or otherwise, a copy of [a]...paper from which it may first be ascertained that the
 13 case is one which is or has become removable...” The 30-day time limit within which a defendant
 14 can remove an action to federal court does not begin until the defendant(s) have received notice of
 15 the facts supporting removal. (*Mattel, Inc. v. Bryant*, 441 F.Supp.2d 1081, 1089-1090).

16 As set forth more fully above, Defendant first received notice that the amount in
 17 controversy exceeds the jurisdictional minimum on or about January 25, 2022 when Plaintiff
 18 served the Statement of Damages on defendant. (Fales Dec. at ¶ 3.) Defendant, by and through
 19 counsel, accessed public records on February 22, 2022 which show that Plaintiff is domiciled in
 20 California. (Fales Dec. at ¶8.) Accordingly, Costco has timely and promptly filed this petition for
 21 removal. (28 U.S.C § 1446.)

22 **IV. JOINDER OF ALL DEFENDANTS**

23 In order to effectuate removal, all defendants must join in the notice of removal. (*Emrich*
 24 *v. Touche Ross & Co.*, 846 F.2d 1190, 1193 (9th Cir. 1988)). In this case, Costco is the only
 25 named and served defendant in the state court action, other than fictitiously named “Does.” (RJN,
 26 Ex. A, Fales Dec. at ¶5). Accordingly, this Notice of Removal is proper.

1 **V. VENUE**

2 Venue of this removed action is proper pursuant to 28 U.S.C. § 1441(a) because this Court
3 is the United States District Court for the district corresponding to the place where the state court
4 action was commenced.

5 **VI. NOTICE TO PLAINTIFF**

6 Costco's Notice to Adverse Parties of Notice of Removal is being contemporaneously filed
7 in Case No. 21-CIV-01517 of the San Mateo County Superior Court.

8 WHEREFORE, Costco prays that the above-entitled action, currently pending in the San
9 Mateo County Superior Court of California, be removed to the United States District Court for the
10 Northern District of California, and that this action proceed in this Court as an action properly
11 removed there.

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13 DATED: February 24, 2022

SEVERSON & WERSON
A Professional Corporation

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15
16 By: _____


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18 Attorneys for Defendant COSTCO WHOLESALE
19 CORPORATION
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